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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/202,838 01/21/00 VERDAGUER

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HM12/0627  
THE SCRIPPS RESEARCH INSTITUTE  
10550 NORTH TORREY PINES ROAD  
MAIL DROP TPC 8  
LA JOLLA CA 92037

EXAMINER

ZHOLL S

ART UNIT

PAPER NUMBER

1631

DATE MAILED:

06/27/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/202,838

Applicant(s)

VERDAGUER ET AL.

Examiner

Shubo "Joe" Zhou

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-15 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

The art unit designated for this application has changed. Applicant(s) are hereby informed that future correspondence should be directed to Art Unit 1631.

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-9, drawn to an isolated nucleic acid comprising a nucleotide sequence that has at least 80% identity to 18 sequential nucleotides of the cassava vein mosaic virus (CsVMV) promoter shown in SEQ ID NO:3. If this Group is elected, the below summarized sequence election is also required.

Group II, claim(s) 10-11, drawn to transgenic plants comprising a promoter nucleotide sequence that has at least 80% identity to 18 sequential nucleotides of the cassava vein mosaic virus (CsVMV) promoter shown in SEQ ID NO:3. If this Group is elected, the below summarized sequence election is also required.

Group III, claims 12-13, drawn to methods of expressing a heterologous nucleic acid sequence in a plant cell. If this Group is elected, the below summarized sequence election is also required.

Group IV, claims 14-15, drawn to chimeric genes that express a heterologous nucleic acid sequence in a plant cell. If this Group is elected, the below summarized sequence election is also required.

The inventions listed as Groups I-IV do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Group I is directed to an isolated nucleic acid comprising a nucleotide sequence that has at least 80% identity to 18 sequential nucleotides of the cassava vein mosaic virus (CsVMV) promoter shown in SEQ ID NO:3. The special technical feature is nucleotide sequence that has at least 80% identity to 18 sequential nucleotides of the cassava vein mosaic virus (CsVMV) promoter shown in SEQ ID NO:3. Group II is directed to transgenic plants comprising a promoter nucleotide sequence that has at least 80% identity to 18 sequential nucleotides of the cassava vein mosaic virus (CsVMV) promoter shown in SEQ ID NO:3; Group III is directed to methods of expressing a heterologous nucleic acid sequence in a plant cell comprising a promoter nucleotide sequence that has at least 80% identity to 18 sequential nucleotides of the cassava vein mosaic virus (CsVMV) promoter shown in SEQ ID NO:3; and Group IV is directed to chimeric genes that express a heterologous nucleic acid sequence in a plant cell comprising a promoter nucleotide sequence that has at least 80% identity to 18 sequential nucleotides of the cassava vein mosaic virus (CsVMV) promoter shown in SEQ ID NO:3. GenBank discloses a CsVMV nucleotide sequence (acc. #: CVU20341, 25-OCT-1995) that has at least 80% identity to 18 sequential nucleotides of the CsVMV promoter shown in the

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instant SEQ ID NO:3, which nucleotide sequence disclosed in GenBank renders Group I not novel. Thus, the technical feature of the polynucleotide sequence is not so special and the Groups are not so linked under PCT Rule 13.1. Additionally, the claimed methods produce different products and/or different results which are not coextensive and which do not share the same technical feature. Consequently, due to the different inventive concepts and technical features among the above five Groups of inventions, they are usually published separately in literature.

Additionally, this application contains claims directed to more than one nucleic acid sequences as shown in the various SEQ ID Nos. Since the GenBank sequence (acc. #: CVU20341, 25-OCT-1995) renders the instant sequences not novel, there is no special technical features linked to the various instant sequences. Thus, they are not so linked as to form a single inventive concept under PCT Rule 13.1. Applicant is required to elect only one nucleic acid sequence for the purpose of examination.

Thus, in summary, each of Groups I-IV is directed to different special technical feature and thus support this lack of unity among all the inventions in the instant application and restriction for examination purposes as indicated is proper

Applicant is advised that the response to this requirement to be complete must include an election of a Group of the invention and a nucleotide sequence to be examined even though the requirement be traversed (37 CFR § 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be

accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).


Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703) 308-4242 or (703)305-3014.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to:

Shubo "Joe" Zhou, Ph.D., whose telephone number is (703) 605-1158. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703) 308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Patent Analyst Tina Plunkett whose telephone number is 703)-305-3524, or to the Technical Center receptionist whose telephone number is (703) 308-0196.

  
S. "Joe" Zhou, Ph.D.  
Patent Examiner

  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER